IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JAIPUR BENCH, JAIPUR

D. B. CRIMINAL APPEAL NO. 549/ 1999

Amar Lal @ Amar Singh & Ors v State of Rajasthan

Date of Judgment: 12th January, 2007

Hon'ble Mr. Justice Shiv Kumar Sharma
Hon'ble Mr. Justice R. S. Chauhan

Mr. Khurshid Ahmad Khan for the Appellants
Mr. M. L. Goyal, Public Prosecutor for the State.

(Per R. S. Chauhan J.):

The testimonies of two child witnesses, the alleged murder of their mother, the conviction under Section 302 read with Section 34 of the Indian Penal Code ('IPC',for short) has brought the appellants before this court. The appellants are challenging the Judgment dated 25-8-1999, passed by the Additional Sessions Judge, Ramganj Mandi, Kota, whereby the learned Judge has convicted the appellants for offence under Sections 302/34 IPC and has sentenced them to Life Imprisonment and has fined them with Rs. 1000/- each and to

further undergo a term of two years of simple imprisonment in default thereof.

In a nutshell, the story of the prosecution is that on 1-4-1998, Ram Swaroop (P. W. 2) orally lodged a report at the Police Station Chechat about an alleged incident that took place in the evening of the same day. According to the complainant, “he and his younger brother and sisters, along with their mother, Naudhan Bai, were returning from their fields. As they came near the Muslim cemetery (“Kabristan”), the accused persons, who were hiding, came out. The accused persons were Narayan s/o Dhula, Laxman s/o Narayand, Kailash s/o Narayan, Balchand s/o Navin, Gopal s/o Narayan, Amar Lal s/o Narayan, Papu s/o Narayan, Smt. Gyarsi w/o Narayan, Radha w/o Gopal, Gita w/o Amar Lal. These persons suddenly surrounded my mother. Narayan caught hold of her hand, Laxman hit her from the back side of the “Jhapta” (a sharp edged weapon) on the hand, Amar Lal hit her on the feet with the sharp side of the “ Jhapta”. Thereupon, my mother fell down; even then, Amar Lal hit my mother on the head with the

“Jhapta”. My mother started bleeding from the head and feet. Kailash, Gopal and Pappu hit her with sticks; Gyarsi, Radha, Gita and Narayan hit her with stones. Consequently, my mother sustained injuries all over her body. Even when we--the brother and the sisters-- cried for help, no one came to our rescue. But because of our shouts, these people fled from the place. Afterwards, my aunt’s son, Ram Singh, who was coming on his bullock-cart, placed our mother on the bullock-cart and carried her to the “Bavadi” (a place where water is collected in a village). There we took her off from the bullock-cart and placed her there. My father and Narayan have joint land, which is shown in the revenue records in the name of Narayan. However, Narayan wants to grab our land. Today we had gone to harvest the wheat on that very land. Therefore, these people have killed my mother with “Jhapta”, sticks and stones. We lost our father about four to five years ago. My mother’s dead body is lying near the village. I have run here to lodge the report.”

On the basis of this report, a formal FIR, FIR No. 50/98 (Ex. P. 3) was chalked out for offences under Sections 302,

147, 148, 149, 341, and 336 of IPC against the persons named in the FIR. After the investigation, the police submitted charge sheet against all the accused persons. In order to support its case, the prosecution examined fifteen witnesses and produced about forty-three documents. In order to buttress their defense, the accused examined ten witnesses and produced a few documents. After going through the oral and documentary evidence, the learned Judge convicted the present appellants as aforementioned, but acquitted the other six co-accused persons. Therefore, this appeal before us.

Mr. Khurshid Ahmad Khan, the learned counsel for the appellants, has raised a plethora of contentions before us: firstly, the two star-witnesses of the prosecution are child witnesses: Ram Saroop (P.W. 2) is twelve years old and Gyan Singh (P. W. 3) is merely ten years old. Considering their tender age, it is not safe to convict the appellants on their testimony. Secondly, there is animosity between one Nanda, and Narayan. The complainant, Ram Swaroop (P. W. 2) is staying with Nanda. Therefore, the possibility of Nanda tutoring

the two child witnesses cannot be ruled out. This possibility is strengthened by the fact that even the learned Judge has concluded that these two child witnesses roped in innocent persons belonging to Narayan's family. Therefore, a distinct possibility does exist that they are falsely implicating the present appellants as well. Fourthly, since the learned Judge has not believed the testimony of these two witnesses qua the six co-accused persons who have been acquitted, the trustworthiness of these witnesses becomes doubtful. Fifthly, the learned trial court has doubted the veracity of the recovery of the weapons from the appellants. No report of the Forensic Science Laboratory has been produced although the "Jhapta" was allegedly recovered. Thus, the prosecution is standing on shaky legs. Sixthly, the prosecution has left out material and independent witnesses like Ram Singh, who carried the deceased Naudhan Bai in his bullock-cart and Trilok Singh, the Sarpanch, who met the complainant as his mother lay in injured condition. Since the prosecution has not examined material witnesses, adverse inference should be read against it. Lastly, according to the prosecution the deceased was not hit on any

vital parts of the body. In case the appellants wanted to kill her, they, being armed with two sharp edged weapons, could have hit her on vital parts of the body. Thus, their intention was not to commit the murder of the deceased.

On the other hand, Mr. M. L. Goyal, the learned Public Prosecutor for the State, has vehemently argued that the star-witnesses are mature enough to testify in the court. Prior to recording their testimony, the learned Judge had tested their understanding and maturity and had found them fit enough to testify in the court. Secondly, the medical evidence has corroborated their testimony. Thirdly, since these children had witnessed the murder of their mother, there is no reason for them to leave the actual culprits out and to falsely implicate the appellants. Hence, their testimonies are reliable and trustworthy. Fourthly, once the two star-witnesses were sufficient to prove the case of the prosecution, there was no need to multiply the number of witnesses. After all, it is the quality of the witnesses that matters and not the quantity. Thus, the prosecution had rightly not produced the other witnesses,

such as Trilok Singh and Ram Singh in the witness box. In fact, the learned Judge had noticed in the impugned judgment that efforts were made by the court to procure the attendance of these two persons. But they did not appear before the court. Therefore, no adverse inference should be drawn from their non-production as witnesses for the prosecution. Fifthly, in India in criminal jurisprudence the principle of falsus in uno, falsus in omnibus (once a liar, always a liar) is inapplicable. Therefore, merely because the learned Judge has not believed the witnesses with regard to the other co-accused persons, there is no need to conclude that the witnesses are unreliable ones. Lastly, the learned Judge has meticulously examined the evidence to acquit the other co-accused persons and to convict the present appellants.

We have heard the learned counsels for the parties, have examined the record that is before us and have perused the impugned Judgment.

It is not in doubt that Naudhan Bai had died a homicidal

death. The Post-Mortem Report (Ex. P. 1) clearly proves that she had suffered eight injuries on her body: while Injury Nos. 3, 4, 5 and 7 were by sharp edged weapon, Injury Nos. 2, 6, 8 were by blunt weapon and Injury No. 1 was an abrasion. Thus, her death was neither natural, nor suicidal, but was clearly homicidal in nature.

Ram Swaroop and Gyan Singh, P.W. 2 and P. W. 3, respectively are the most important witnesses of the prosecution. In his examination-in-chief, Ram Swaroop tells us almost the same story as he had narrated in the FIR. Therefore, the same is not being narrated here. Of course, in his examination-in-chief he also informs us that while he and his brothers and sisters were with their injured mother, Trilok Singh, the Sarpanch, passed them by in his jeep. They asked him for help. But he refused and went away. He also tells us that later on Ram Singh, his cousin brother, was going by on his bullock-cart. He stopped and picked up the injured mother and took her to a “Bavadi” (a place where water is collected in the village), where he left them.

Gyan Singh, (P. W. 3) in his examination-in-chief repeats basically the same story as Ram Swaroop. However, in his cross-examination he tells us something, which supports the defense version. The defense has been claiming that Narayan has been falsely implicated because of the animosity between him and Nanda. According to Gyan Singh, after the death of his mother, Ram Swaroop has been staying with Nanda. Nanda has also accompanied the witness to the court. He also admits that Nanda works as a cook in the Police Station Chechat. Considering these statements, the possibility that Narayan has been roped in at the behest of Nanda cannot be ruled out. After all, Nanda has an axe to grind against Narayan. This would also explain as to why these two witnesses had roped in the other members of Narayan's family who according to the learned trial court were not even in the village when the alleged murder took place.

However, these two witnesses are consistent about their testimony with regard to Amar Lal and Laxman. Their testimony

is further corroborated by the medical evidence, as according to the Post-Mortem Report (Ex. P. 1) the deceased had four incised wounds. Moreover, “Jhapta”, a sharp edged weapon has been recovered at the instance of these two appellants.

Of course, it is not necessary for the prosecution to multiply the number of witnesses, especially if sufficient numbers of witnesses have been examined to prove the case of the prosecution. Thus, the non-production of some witnesses is not fatal to the prosecution.

Moreover, it is a settled position of criminal jurisprudence that conviction can be based on the testimony of a child witness, provided he is competent to testify, is truthful, has not been tutored and is found to be reliable. While dealing with a child witness, the court is put on guard to scrutinize the evidence meticulously so as to eliminate the possibility of the witness being tutored, or of being more imaginative than realistic. But, once the court concludes that the child witness is free of outside influence, is trustworthy, then the conviction can

be based on his testimony. In the present case, we find the two children trustworthy qua Amar Lal and Laxman, but we have reasonable doubt about the involvement of Narayan in the alleged crime.

For these reasons, we dispose of instant appeal in the following terms:

i) We allow the appeal of appellant Narayan Lal and acquit him of the charge under Sections 302/34 IPC. He is on bail, he need not surrender and his bail bonds stand discharged.

ii) We do not find any merit in the appeal of appellants Amar Lal @ Amar Singh and Laxman @ Nanya and the same accordingly stand dismissed. Their conviction and sentence under Section 302/34 IPC are confirmed.

iii) The impugned judgment of the learned trial court stands modified as indicated above.

(R. S. Chauhan) J. (Shiv Kumar Sharma) J.